

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In re: Bair Hugger Forced Air Warming
Products Liability Litigation

MDL No. 2666
(JNE/FLN)

This Document Relates to All Actions

JOINT MOTION REGARDING
CONTINUED SEALING

Documents have been filed under temporary seal in connection with the following motion:

Defendant 3M Company's Motion to Remove "Confidential" Designation from Documents Produced by Ridgeview Medical Center (Doc. No. 393)

Pursuant to LR 5.6, the parties submit this Joint Motion Regarding Continued Sealing.

Dated: June 1, 2017

Respectfully submitted,

/s/ Monica L. Davies

Jerry W. Blackwell (MN #186867)
Mary S. Young (MN #0392781)
Benjamin W. Hulse (MN #0390952)
Monica L. Davies (MN #0135023)
BLACKWELL BURKE P.A.
431 South Seventh Street
Suite 2500
Minneapolis, MN 55415
Phone: (612) 343-3256
Fax: (612) 343-3205
Email: blackwell@blackwellburke.com
myoung@blackwellburke.com
bhulse@blackwellburke.com
mdavies@blackwellburke.com

Bridget M. Ahmann (MN #016611x)
FAEGRE BAKER DANIELS LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402
(612) 766-7000
Email: bridget.ahmann@faegrebd.com

**Counsel for Defendants 3M Company
and Arizant Healthcare, Inc.**

/s/ Genevieve M. Zimmerman

Genevieve M. Zimmerman (MN #330292)
MESHBESHER & SPENCE, LTD.
1616 Park Avenue South
Minneapolis, MN 55404
Phone: (612) 339-9121
Fax: (612) 339-9188
Email: gzimmerman@meshbesher.com

Michael V. Ciresi (MN #0016949)
Jan M. Conlin (MN #0192697)
CIRESI CONLIN LLP
225 S. 6th St., Suite 4600
Minneapolis, MN 55402
Phone: 612.361.8202
Email: MVC@CiresiConlin.com
JMC@CiresiConlin.com

Co-Lead Counsel for Plaintiffs

/s/ J. Randall Benham
J. Randall Benham (#0154726)
AUGUSTINE BIOMEDICAL & DESIGN LLC
6581 City West Parkway
Eden Prairie, MN 55127
Phone: (952) 465-3500
Fax: (952) 465-3501
Email: rbenham@augbiomed.com

Counsel for Scott Augustine

/s/ Kelly C. Dohm
Kelly C. Dohm (#0254046)
MELCHERT HUBERT SJODIN, PLLP
121 West Main Street, Suite 200
Waconia, MN 55387
Phone: (952) 442-7700
Fax: (952) 442-6166
Email: kdohm@mhslaw.com

Counsel for Ridgeview Medical Center

| DKT. NO. | DESCRIPTION OF DOCUMENT | MARK "X" IN APPLICABLE COLUMN | | NONPARTY THAT DESIGNATED DOC. CONFIDENTIAL (IF ANY) | REASON WHY DOCUMENT SHOULD REMAIN SEALED OR BE UNSEALED ⁱ |
|-------------|--|---|--|---|--|
| | | Parties Agree Doc. Should Remain Sealed | Parties Disagree Doc. Should Be Unsealed | | |
| 395 | Memorandum in Support of Motion to Remove "Confidential" Designation from Documents Produced by Ridgeview Medical Center | | X | | The Court granted 3M's motion to lift the "confidential" designation from documents produced by Ridgeview Medical Center. The portions of Dkt. No. 395 referring to such documents should thus be unsealed. Dkt. No. 395 also refers to documents designated as confidential by Dr. Augustine, which he believes should remain under seal. 3M does not agree those documents are confidential and, thus, does not agree they should remain under seal. |
| 397 | Declaration of Benjamin W. Hulse in Support of Motion to Remove "Confidential" Designation from Documents Produced by Ridgeview Medical Center | | X | | The Court granted 3M's motion to lift the "confidential" designation from documents produced by Ridgeview Medical Center. The portions of Dkt. No. 395 referring to such documents should thus be unsealed. Dkt. No. 395 also refers to documents designated as confidential by Dr. Augustine, which he believes should remain under seal. 3M does not agree those documents are confidential and, thus, does not agree they should remain under seal. |

| | | | | |
|-----|--|---|---------------------|---|
| 399 | Exhibit A – Summary chart that describes the documents at issue in 3M’s motion | X | | The Court granted 3M’s motion to lift the “confidential” designation from documents produced by Ridgeview Medical Center. The documents described in the chart are no longer considered confidential and, thus, there is no reason to keep them under seal. |
| 400 | Exhibit B – Email chain between J. Randall Benham, David Hodges, Gabriel Assaad and Scott Augustine, including emails from April 25, 2013 through April 30, 2013 | X | Dr. Scott Augustine | Dr. Augustine designated this document as confidential and believes it should remain under seal. 3M does not believe the confidential designation is appropriate, and notes that Dr. Augustine has not identified any provision of the Protective Order that would be applicable. Thus, 3M does not agree that the document should remain sealed. |
| 401 | Exhibit C – “Bair Hugger Warming and Peri-Prosthetic Infections in Joint Replacement Surgery: A Guide to Product Liability Litigation” | X | Dr. Scott Augustine | Dr. Augustine designated this document as confidential and believes it should remain under seal. The Court has already concluded any confidentiality was waived with respect to this document. See Dkt. No. 250 at 9-11. 3M does not believe the confidential designation is appropriate and notes that Dr. Augustine has not identified any provision of the Protective Order that would be applicable. Thus 3M does not agree that the document should remain sealed. |

| | | | | |
|-----|--|---|--------------------------|--|
| 402 | Exhibit D – Document produced to 3M by Ridgeview Medical Center, RMC000102-05 | X | Ridgeview Medical Center | The Court granted 3M's motion to lift the "confidential" designation from documents produced by Ridgeview Medical Center. The documents described in the chart are no longer considered confidential and, thus, there is no reason to keep them under seal. |
| 403 | Exhibit E – Document produced to 3M by Ridgeview Medical Center, RMC000039 | X | Ridgeview Medical Center | The Court granted 3M's motion to lift the "confidential" designation from documents produced by Ridgeview Medical Center. The documents described in the chart are no longer considered confidential and, thus, there is no reason to keep them under seal. |
| 404 | Exhibit F – Copy of pages 311-312 from the deposition transcript of Dr. Scott Augustine | X | Dr. Scott Augustine | Dr. Augustine designated this portion of his deposition testimony as confidential, and believes it should remain under seal. 3M does not believe the confidential designation is appropriate and, and notes that Dr. Augustine has not identified any provision of the Protective Order that would be applicable. Thus, 3M does not agree that the testimony should remain sealed. |
| 444 | Memorandum in Opposition to 3M Company's Motion to Remove "Confidential" Designation from Documents Produced by Ridgeview Medical Center | X | Ridgeview Medical Center | To the extent Dkt. No. 444 discusses the policies and procedures submitted by Ridgeview in opposition to 3M's motion (described herein), the parties agree that it contains information designated as confidential by a nonparty that should remain sealed. Based on the Court's Order that the "confidential" |

| | | | |
|-----|---|---|---|
| | | | designation be lifted as to the documents at issue in 3M's motion, however, the portions of Dkt. No. 444 that refer to such documents should be unsealed (and unredacted) in accordance with the Order. |
| 445 | Affidavit of Julie Hauser in Opposition to 3M Company's Motion to Remove "Confidential Designation from Documents Produced by Ridgeview Medical Center. | X | Ridgeview Medical Center |
| 446 | Exhibit A – Ridgeview Medical Center chart of owned and affiliated organizations, RMC000906 | X | Ridgeview Medical Center |
| 448 | Exhibit B – Policy No. 2617, Privacy of Protected Health Information, RMC000907-RMC000912 | X | Ridgeview Medical Center |
| 450 | Exhibit C – Code of Ethical Behavior and Business, Policy No. 2733, RMC000913-RMC000917 | X | Ridgeview Medical Center |
| 452 | Exhibit D – Policy No. 2966, Social Media, RMC000918-RMC000921 | X | Ridgeview Medical Center |
| 455 | Exhibit E – Policy No. 3501, Access Control Policy, RMC000922-RMC000923 | X | Ridgeview Medical Center |
| 457 | Exhibit F – Policy No. 3503, Administrator/Special Access Policy, RMC000924-RMC000925 | X | Ridgeview Medical Center |

| | | | | | |
|-----|--|---|--|--------------------------|--|
| 460 | Exhibit G – Policy No. 3508, Data Classification Policy, RMC000926-RMC000929 | X | | Ridgeview Medical Center | Contains information designated as confidential by a nonparty. |
| 462 | Exhibit H – Policy No. 3511, Enterprise Information Security Governance Policy, RMC000930-RMC000933 | X | | Ridgeview Medical Center | Contains information designated as confidential by a nonparty. |
| 464 | Exhibit I – Policy No. 3516, Passwords Policy, RMC000934-RMC000935 | X | | Ridgeview Medical Center | Contains information designated as confidential by a nonparty. |
| 466 | Exhibit J – Policy No. 3517, Physical Security Policy, RMC000936-RMC000937 | X | | Ridgeview Medical Center | Contains information designated as confidential by a nonparty. |
| 468 | Exhibit K – Ridgeview Medical Center Termination/Separation Checklist, RMC000938 | X | | Ridgeview Medical Center | Contains information designated as confidential by a nonparty. |
| 470 | Exhibit L – Policy No. 3518, Privacy (Employee) Policy, RMC000939-RMC000940 | X | | Ridgeview Medical Center | Contains information designated as confidential by a nonparty. |
| 472 | Exhibit M – Policy No. 3521, Vendor/Third-Party Access Policy, RMC000941-RMC000943 | X | | Ridgeview Medical Center | Contains information designated as confidential by a nonparty. |
| 474 | Exhibit N – Documents containing Ridgeview Medical Center's Code of Conduct, RMC000944-RMC000951 | X | | Ridgeview Medical Center | Contains information designated as confidential by a nonparty. |
| 476 | Exhibit O – Documents contain an Employee Acknowledgement form regarding Ridgeview Medical Center's Employee Handbook, RMC000952-RMC000957 | X | | Ridgeview Medical Center | Contains information designated as confidential by a nonparty. |

| | | | | | |
|-----|---|---|--|--------------------------|--|
| 478 | Exhibit P – Computer Access Request Form, RMC000958 | X | | Ridgeview Medical Center | Contains information designated as confidential by a nonparty. |
| 481 | Exhibit A to the Affidavit of Kelly C. Dohm | X | | Ridgeview Medical Center | Contains information designated as confidential by a nonparty. |
| 483 | Exhibit C to the Affidavit of Kelly C. Dohm | X | | Ridgeview Medical Center | Contains information designated as confidential by a nonparty. |
| 485 | Exhibit E to the Affidavit of Kelly C. Dohm | X | | Ridgeview Medical Center | Contains information designated as confidential by a nonparty. |

Plaintiffs take no position with respect to the sealing of these documents for purposes of this motion.

ⁱ This explanation should be very brief. For example:

1. contains information designated as confidential by a nonparty
2. contains information designated as confidential under a non-disclosure agreement between plaintiff and nonparty
3. contains information designated as confidential under a protective order issued in this case [Docket No. XX]
4. discovery materials filed in connection with a motion under Fed R. Civ. P. 37
5. reveals trade secrets of defendant
6. reveals proprietary business methods of plaintiff
7. confidential financial records
8. confidential medical records
9. contains termination information regarding former employees of defendant
10. reveals information regarding a minor
11. contains information ordered sealed by the court on DATE [Docket No. XX]